

REFERENCE TITLE: schools; contractors; fingerprinting; crimes

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

## HB 2402

Introduced by  
Representatives Young Wright, Williams: Ableser, Campbell CL, Crandall,  
Fleming, Schapira, Waters, Senator Melvin

AN ACT

AMENDING SECTION 15-512, ARIZONA REVISED STATUTES; RELATING TO SCHOOL  
EMPLOYEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-512, Arizona Revised Statutes, is amended to  
3 read:

4 15-512. Noncertificated personnel: fingerprinting personnel:  
5 background investigations: affidavit: civil immunity:  
6 violation: classification: definition

7 A. Noncertificated personnel and personnel who are not paid employees  
8 of the school district and who are not either the parent or the guardian of a  
9 pupil who attends school in the school district but who are required or  
10 allowed to provide services directly to pupils without the supervision of a  
11 certificated employee and who are initially hired by a school district after  
12 January 1, 1990 shall be fingerprinted as a condition of employment except  
13 for personnel who are required as a condition of licensing to be  
14 fingerprinted if the license is required for employment or for personnel who  
15 were previously employed by a school district and who reestablished  
16 employment with that district within one year after the date that the  
17 employee terminated employment with the district. A school district may  
18 release the results of a background check to another school district for  
19 employment purposes. The employee's fingerprints and the form prescribed in  
20 subsection D of this section shall be submitted to the school district within  
21 twenty days after the date an employee begins work. A school district may  
22 terminate an employee if the information on the form provided under  
23 subsection D of this section is inconsistent with the information received  
24 from the fingerprint check. The school district shall develop procedures for  
25 fingerprinting employees. For the purposes of this subsection, "supervision"  
26 means under the direction of and, except for brief periods of time during a  
27 school day or a school activity, within sight of a certificated employee when  
28 providing direct services to pupils.

29 B. Fingerprints submitted pursuant to this section shall be used to  
30 conduct a state and ~~national~~ FEDERAL criminal records check pursuant to  
31 section 41-1750 and Public Law 92-544. The department of public safety may  
32 exchange this fingerprint data with the federal bureau of investigation.

33 C. The school district shall assume the costs of fingerprint checks  
34 and may charge these costs to its fingerprinted employee, except that the  
35 school district may not charge the costs of the fingerprint check to  
36 personnel of the school district who are not paid employees. The fees charged  
37 for fingerprinting shall be deposited with the county treasurer who shall  
38 credit the deposit to the fingerprint fund of the school district. The costs  
39 charged to a fingerprinted employee are limited to and the proceeds in the  
40 fund may only be applied to the actual costs, including personnel costs,  
41 incurred as a result of the fingerprint checks. The fingerprint fund is a  
42 continuing fund which is not subject to reversion.

D. Personnel required to be fingerprinted as prescribed in subsection A of this section shall certify on forms that are provided by the school and notarized whether they are awaiting trial on or have ever been convicted of or admitted in open court or pursuant to a plea agreement committing any of the following criminal offenses in this state or similar offenses in another jurisdiction:

1. Sexual abuse of a minor.
2. Incest.
3. First or second degree murder.
4. Kidnapping.
5. Arson.
6. Sexual assault.
7. Sexual exploitation of a minor.
8. Felony offenses involving contributing to the delinquency of a minor.
9. Commercial sexual exploitation of a minor.
10. Felony offenses involving sale, distribution or transportation of, offer to sell, transport, or distribute or conspiracy to sell, transport or distribute marijuana or dangerous or narcotic drugs.
11. Felony offenses involving the possession or use of marijuana, dangerous drugs or narcotic drugs.
12. Misdemeanor offenses involving the possession or use of marijuana or dangerous drugs.
13. Burglary in the first degree.
14. Burglary in the second or third degree.
15. Aggravated or armed robbery.
16. Robbery.
17. A dangerous crime against children as defined in section 13-705.
18. Child abuse.
19. Sexual conduct with a minor.
20. Molestation of a child.
21. Manslaughter.
22. Aggravated assault.
23. Assault.
24. Exploitation of minors involving drug offenses.

E. A school district may refuse to hire or may review or terminate personnel who have been convicted of or admitted committing any of the criminal offenses prescribed in subsection D of this section or of a similar offense in another jurisdiction. A school district which is considering terminating an employee pursuant to this subsection shall hold a hearing to determine whether a person already employed shall be terminated. In conducting a review, the governing board shall utilize the guidelines, including the list of offenses that are not subject to review, as prescribed by the state board of education pursuant to section 15-534, subsection C. In

1 considering whether to hire or terminate the employment of a person, the  
2 governing board shall take into account the following factors:

3 1. The nature of the crime and the potential for crimes against  
4 children.

5 2. Offenses committed as a minor for which proceedings were held under  
6 the jurisdiction of a juvenile or an adult court.

7 3. Offenses that have been expunged by a court of competent  
8 jurisdiction, if the person has been pardoned or if the person's sentence has  
9 been commuted.

10 4. The employment record of the person since the commission of the  
11 crime if the crime was committed more than ten years before the governing  
12 board's consideration of whether to hire or terminate the person.

13 5. The reliability of the evidence of an admission of a crime unless  
14 made under oath in a court of competent jurisdiction.

15 F. Before employment with the school district, the district shall make  
16 documented, good faith efforts to contact previous employers of a person to  
17 obtain information and recommendations which may be relevant to a person's  
18 fitness for employment. A governing board shall adopt procedures for  
19 conducting background investigations required by this subsection, including  
20 one or more standard forms for use by school district officials to document  
21 their efforts to obtain information from previous employers. A school  
22 district may provide information received as a result of a background  
23 investigation required by this section to any other school district, to any  
24 other public school and to any public entity that agrees pursuant to a  
25 contract or intergovernmental agreement to perform background investigations  
26 for school districts or other public schools. School districts and other  
27 public schools may enter into intergovernmental agreements pursuant to  
28 section 11-952 and cooperative purchasing agreements pursuant to rules  
29 adopted in accordance with section 15-213 for the purposes of performing or  
30 contracting for the performance of background investigations and for sharing  
31 the results of background investigations required by this subsection.  
32 Information obtained about an employee or applicant for employment by any  
33 school district or other public school in the performance of a background  
34 investigation may be retained by that school district or the other public  
35 school or by any public entity that agrees pursuant to contract to perform  
36 background investigations for school districts or other public schools and  
37 may be provided to any school district or other public school that is  
38 performing a background investigation required by this subsection.

39 G. A school district may fingerprint any other employee of the  
40 district, whether paid or not, or any other applicant for employment with the  
41 school district not otherwise required by this section to be fingerprinted on  
42 the condition that the school district may not charge the costs of the  
43 fingerprint check to the fingerprinted applicant or nonpaid employee.

44 H. A school district shall fingerprint or require the submission of a  
45 full set of fingerprints of any contractor, subcontractor or vendor or any

1 employee of a contractor, subcontractor or vendor who is contracted to  
2 provide services on a regular basis on school property. The school district  
3 may charge the costs of the fingerprint check to the contractor,  
4 subcontractor or vendor or the employee of the contractor, subcontractor or  
5 vendor. A school district governing board shall adopt policies that may  
6 exempt persons who are not likely to have direct, unsupervised contact with  
7 pupils from the requirements of this subsection. A school district, its  
8 governing board members, its school council members and its employees are  
9 exempt from civil liability for the consequences of adoption and  
10 implementation of policies and procedures pursuant to this subsection unless  
11 the school district, its governing board members, its school council members  
12 or its employees are guilty of gross negligence or intentional misconduct.  
13 For the purposes of this subsection, "provide services on a regular basis"  
14 means services provided by a contractor, subcontractor or vendor at least  
15 five times each month on school property.

16 I. NOTWITHSTANDING ANY OTHER LAW, A SCHOOL DISTRICT MAY REFUSE TO  
17 CONTRACT WITH ANY CONTRACTOR, SUBCONTRACTOR OR VENDOR, MAY TERMINATE THE  
18 CONTRACT OF ANY CONTRACTOR, SUBCONTRACTOR OR VENDOR, OR MAY REFUSE TO BE  
19 SERVED BY ANY EMPLOYEE OF A CONTRACTOR, SUBCONTRACTOR OR VENDOR, WHO HAS BEEN  
20 CONVICTED OF OR WHO HAS ADMITTED COMMITTING ANY OF THE CRIMINAL OFFENSES  
21 PRESCRIBED IN SUBSECTION D OF THIS SECTION OR A SIMILAR OFFENSE IN ANOTHER  
22 JURISDICTION. A SCHOOL DISTRICT THAT IS CONSIDERING TERMINATING AN EXISTING  
23 CONTRACT PURSUANT TO THIS SUBSECTION SHALL HOLD A HEARING TO DETERMINE  
24 WHETHER TO TERMINATE THE CONTRACT. DURING THE HEARING, THE GOVERNING BOARD  
25 OR A HEARING OFFICER APPOINTED BY THE GOVERNING BOARD FOR THAT PURPOSE SHALL  
26 USE THE GUIDELINES PRESCRIBED BY THE STATE BOARD OF EDUCATION PURSUANT TO  
27 SECTION 15-534, SUBSECTION C, INCLUDING THE LIST OF OFFENSES THAT ARE NOT  
28 SUBJECT TO REVIEW. A SCHOOL DISTRICT, ITS GOVERNING BOARD MEMBERS, ITS  
29 HEARING OFFICERS, ITS SCHOOL COUNCIL MEMBERS AND ITS EMPLOYEES ARE EXEMPT  
30 FROM CIVIL LIABILITY FOR ACTIONS TAKEN PURSUANT TO THIS SUBSECTION, UNLESS  
31 THE ACTION TAKEN AMOUNTS TO INTENTIONAL MISCONDUCT. IN CONSIDERING WHETHER  
32 TO TERMINATE AN EXISTING CONTRACT, THE GOVERNING BOARD OR HEARING OFFICER  
33 SHALL TAKE INTO ACCOUNT THE FOLLOWING FACTORS:

34 1. THE NATURE OF THE CRIME, THE POTENTIAL FOR CRIMES AGAINST CHILDREN  
35 AND THE NATURE AND POTENTIAL FOR INTERACTION WITH PUPILS BY THE CONTRACTOR,  
36 SUBCONTRACTOR OR VENDOR OR THE EMPLOYEE OF THE CONTRACTOR, SUBCONTRACTOR OR  
37 VENDOR.

38 2. OFFENSES COMMITTED AS A MINOR FOR WHICH PROCEEDINGS WERE HELD UNDER  
39 THE JURISDICTION OF A JUVENILE COURT OR AN ADULT COURT.

40 3. OFFENSES THAT HAVE BEEN EXPUNGED BY A COURT OF COMPETENT  
41 JURISDICTION BECAUSE THE PERSON HAS BEEN PARDONED OR THE PERSON'S SENTENCE  
42 HAS BEEN COMMUTED.

43 4. WHETHER THE CRIME WAS COMMITTED MORE THAN TEN YEARS BEFORE THE  
44 HEARING.

1           5. THE RELIABILITY OF THE EVIDENCE OF AN ADMISSION OF A CRIME.  
2           ADMISSIONS MADE UNDER OATH IN A COURT OF COMPETENT JURISDICTION ARE PRESUMED  
3           TO BE RELIABLE FOR THE PURPOSES OF THIS PARAGRAPH.

4           ~~I.~~ J. Subsection A of this section does not apply to a person who  
5           provides instruction or other education services to a pupil, with the written  
6           consent of the parent or guardian of the pupil, under a work release program,  
7           advance placement course or other education program that occurs off school  
8           property.

9           ~~J.~~ K. Public entities that agree pursuant to contract to perform  
10          background investigations, public schools, the department of education and  
11          previous employers who provide information pursuant to this section are  
12          immune from civil liability unless the information provided is false and is  
13          acted on by the school district to the harm of the employee and the public  
14          entity, the public school, the previous employer or the department of  
15          education knows the information is false or acts with reckless disregard of  
16          the information's truth or falsity. A school district which relies on  
17          information obtained pursuant to this section in making employment decisions  
18          is immune from civil liability for use of the information unless the  
19          information obtained is false and the school district knows the information  
20          is false or acts with reckless disregard of the information's truth or  
21          falsity.

22          ~~K.~~ L. The superintendent of a school district or chief administrator  
23          of a charter school or the person's designee who is responsible for  
24          implementing the governing board's policy regarding background investigations  
25          required by subsection F of this section and who fails to carry out that  
26          responsibility is guilty of unprofessional conduct and shall be subject to  
27          disciplinary action by the state board.

28          ~~L.~~ M. A school district may hire noncertificated personnel before  
29          receiving the results of the fingerprint check but may terminate employment  
30          if the information on the form provided in subsection D of this section is  
31          inconsistent with the information received from the fingerprint check. In  
32          addition to any other conditions or requirements deemed necessary by the  
33          superintendent of public instruction to protect the health and safety of  
34          pupils, noncertificated personnel who are required or allowed unsupervised  
35          contact with pupils may be hired by school districts before the results of a  
36          fingerprint check are received if all of the following conditions are met:

37               1. The school district that is seeking to hire the applicant shall  
38               document in the applicant's file the necessity for hiring and placement of  
39               the applicant before a fingerprint check could be completed.

40               2. The school district that is seeking to hire the applicant shall do  
41               all of the following:

42                   (a) Ensure that the department of public safety completes a statewide  
43                   criminal history ~~information~~ RECORDS check on the applicant. A statewide  
44                   criminal history ~~information~~ RECORDS check shall be completed by the

1 department of public safety every one hundred twenty days until the date that  
2 the fingerprint check is completed.

3 (b) Obtain references from the applicant's current employer and two  
4 most recent previous employers except for applicants who have been employed  
5 for at least five years by the applicant's most recent employer.

6 (c) Provide general supervision of the applicant until the date that  
7 the fingerprint check is completed.

8 (d) Report to the superintendent of public instruction on June 30 and  
9 December 31 **EACH YEAR** the number of applicants hired before the completion of  
10 a fingerprint check. In addition, the school district shall report the  
11 number of applicants for whom fingerprint checks were not received after one  
12 hundred twenty days and after one hundred seventy-five days of hire.

13 ~~M.~~ **N.** Notwithstanding any other law, this section does not apply to  
14 pupils who attend school in a school district and who are also employed by a  
15 school district.

16 ~~N.~~ **O.** A person who makes a false statement, representation or  
17 certification in any application for employment with the school district is  
18 guilty of a class 3 misdemeanor.

19 ~~O.~~ **P.** For the purposes of this section, "background investigation"  
20 means any communication with an employee's or applicant's former employer  
21 that concerns the education, training, experience, qualifications and job  
22 performance of the employee or applicant and that is used for the purpose of  
23 evaluating the employee or applicant for employment. Background investigation  
24 does not include the results of any state or federal criminal history records  
25 check.